

OPINION

OF

HUNDELL PALMER, ESQ., Q.C.

WITH THE CASE SUBMITTED TO HIM

CONCERNING THE RECENT ALTERATIONS

AT THE

L MEDICAL BENEVOLENT COLLEGE.

AND

A PRELIMINARY STATEMENT.

BY W. A. N. CATTLIN,

FELLOW OF THE ROYAL COLLEGE OF SURGEONS OF ENGLAND.

"MAGNA EST VERITAS ET PRÆVALEBIT."

LONDON:

EFFINGHAM WILSON,

ROYAL EXCHANGE.

PRESENTED
by the
AUTHORITY

LONDON :
REED AND PARDON, PRINTERS,
PATERNOSTER ROW.

A PRELIMINARY STATEMENT

RELATING TO THE

RECENT ALTERATIONS

AT THE

ROYAL MEDICAL BENEVOLENT COLLEGE.

BY W. A. N. CATTLIN,

FELLOW OF THE ROYAL COLLEGE OF SURGEONS OF ENGLAND.

THE circumstances which have led to this publication are as follows :—

In the year 1851, Mr. Propert and other benevolent individuals conceived the idea of founding an Institution to be called the ROYAL MEDICAL BENEVOLENT COLLEGE, the design and object of which were announced to the world by the following Prospectus :—

“PERSPECTIVE VIEW OF THE PROPOSED*

“MEDICAL COLLEGE.

“Estimated Cost.

	£	s.	d.
“The Residence Department, comprehending 52 houses, “each capable of accommodating two inhabitants .	10,000	0	0
“The Collegiate Department, providing accommodation “for 100 children, with school and class-rooms, dining- “hall, dormitories, masters’ houses, and requisite offices “for tutors, matron, and domestics	6,500	0	0
“The Chapel, containing 300 sittings	1,500	0	0
“Total	£18,000	0	0

* This was headed by a drawing of the intended Buildings.

“ IT is proposed to Erect and Endow a COLLEGE for the RECEPTION
 “ OF DISTRESSED MEMBERS of the MEDICAL PROFESSION, or
 “ their WIDOWS, and a SCHOOL for the EDUCATION and
 “ MAINTENANCE of their SONS; to be called

“ THE ROYAL MEDICAL BENEVOLENT COLLEGE.

“ The government of the COLLEGE to be vested in the Patron,
 “ President, Vice-presidents, Trustees, and Council.

“ The Vice-presidents to consist of the three following classes:—
 “ the Clergy and lay Members, Physicians and Consulting Surgeons,
 “ and General Practitioners, all of whom shall be *ex-officio* Members
 “ of the Council.

“ The Provisional Committee to consist of the present Donors and
 “ Subscribers to the College.

“ The Council to consist of _____ Members, to
 “ be chosen from the three classes above mentioned, one-third of each
 “ class to vacate their offices annually, but to be eligible for re-election.

“ All Donors of Ten Guineas, or upwards, or Subscribers of One
 “ Guinea annually, shall be entitled to attend, and vote at every
 “ General Meeting.

“ Experience has already proved that there will be many larger
 “ Contributors, their privileges will be determined hereafter.

“ It is proposed the College shall provide accommodation for *one*
 “ *hundred Residents*, consisting of two commodious rooms for each
 “ Resident, with necessary Offices, and a separate entrance to each.
 “ Each Pensioner must be a legally qualified Practitioner, and be
 “ possessed of a clear income of not less than fifteen pounds per
 “ annum; Widows will also be required to have the same amount of
 “ income, and to be the widows of legally qualified Medical men.

“ It is hoped, nay confidently anticipated, that the Endowment
 “ Fund will be such as to warrant the Governing Council recom-
 “ mending the Election of some urgent but deserving cases, to be
 “ wholly supported by the Institution.

“ *The School department shall afford accommodation for one hundred*
 “ *Boys, with commodious dormitories, and other arrangements for Masters,*
 “ *Tutors, Matron, and Domestic.* It is proposed that this Department
 “ of the Institution shall be increased, from time to time, as the funds
 “ placed at the disposal of the Council may permit.

“ No boy to be eligible for admission unless he be the son of a duly
 “ qualified Practitioner. The education to be of a high character, and
 “ conducted by Clergymen of the Church of England. The whole annual

“ expense for Education, Board, Lodging, Washing, &c., to be twenty-five pounds. Books, the only extra, to be furnished at the cost price.

“ It is also proposed to admit a certain number of Orphans, to be entirely educated and supported at the expense of the Establishment.

“ The foregoing plan is submitted, with much confidence, to the Medical Profession and the benevolent public at large.

“ When the various casualties and difficulties to which Medical men are especially exposed are taken into consideration, it must excite astonishment that no similar proposition has hitherto been offered to the philanthropic members of our country. The usefulness of the Medical Profession to all classes of persons must be apparent to every one who has required their ministrations in seasons of sickness ; and in many instances the Medical man is the confidential adviser and friend of his patients, when his professional aid may not be required : it rarely happens that, notwithstanding the constant toil and anxiety of a laborious and responsible Profession, the Medical man is able adequately to provide for the exigencies and wants of his family. In the event of sickness overtaking him, or should his life be curtailed by the numerous accidents or dangers to which he is peculiarly exposed, it too often happens that his family are left in a state of destitution.

“ Should this suggestion be efficiently carried out, how much will his cares and anxieties be lessened, how much the hearts of the Widow and Orphan be gladdened, how much distress and misery will it prevent, and how much anguish will it appease ; let us, therefore, resolve, by a great, united, and unrelaxing effort, to remedy an evil that has so long existed.

“ This extensive plan for the relief and assistance of a deserving and useful class of the community is anxiously but confidently committed to the liberal support of the public, in the full assurance, that the active spirit of benevolence, which so honourably characterizes this favoured country beyond all the nations of the earth, will not fail to promote and sustain so laudable and charitable an object.

“ A considerable sum has already been received (of which a list will shortly be published) and invested in Government Securities, by the Trustees.

“ JAMES A. WILSON, Esq., M.D.

“ ROBERT LEE, Esq., M.D., F.R.S.

“ WILLIAM FERGUSSON, Esq., F.R.S.

“ JOHN BACOT, Esq., and

“ BENJAMIN PHILLIPS, Esq., F.R.S.

“ Donations and Subscriptions received by the Treasurer,

“ ROBERT GOSLING, Esq., 19, Fleet Street,

AND ALSO BY

“ SIR CLAUDE SCOTT, Bart., and Co., 1, Cavendish Square.

“ Until suitable Offices have been taken, all communications to be
“ addressed to Mr. PROPERT, 6, New Cavendish-street, Portland-
“ place.”

The success of the scheme was so great, that between 1851 and 1856 FORTY-FIVE THOUSAND POUNDS were received from the Public. The whole of this sum had been obtained upon the basis of the original Prospectus, without any other modification of the terms than was involved in altering the charge for Education from £25 a-year *exclusive of books*, to £30 a-year, *including books*.

In May, 1854, the Institution was so far advanced, that the Council issued their first Report, detailing the purchase of land, the laying the foundation-stone of the College by Earl Manvers, in the name of Prince Albert, and a contract with a builder to complete the works. The Report proceeded to state that it was confidently anticipated that in the course of the next year the building would be ready to admit Pensioners and Scholars, and that the Council had already received applications for twenty Exhibitionerships, sixteen Foundation Scholarships, and fourteen Pensionerships.

And that during the past Winter the question that had most seriously engaged the attention of the Council had been the framing of the Laws *for final adoption* by the general body of the Governors. The Laws so adopted were appended to the Report, and so far as relate to the School are as follows :—

“ LAWS OF THE MEDICAL BENEVOLENT COLLEGE.

*Adopted at the FIRST GENERAL MEETING OF GOVERNORS, held at the
“ HANOVER SQUARE ROOMS, on Thursday, May 18, 1854.*

“ I.—OBJECTS.

“ THE MEDICAL BENEVOLENT COLLEGE has been founded to provide—

“ 1st. An ASYLUM for duly qualified Medical Men and their Widows, in reduced circumstances.

“ 2ndly. A SCHOOL for the Sons of duly qualified Medical Men.

“ 3rdly. Annuities or occasional pecuniary assistance to duly qualified Medical Men in distressed circumstances, or to their families; but no such Annuities or assistance may be granted until the Governors shall decide at a General Meeting, after due announcement, that the Asylum and School, which are the principal objects, have been carried into effect; nor shall they at any time be granted to the detriment of the Asylum or School.

“ There shall be a CHAPEL for Divine Worship, according to the ritual of the Church of England.

“ Those shall be considered duly qualified Medical Men, who have a Medical Degree, License, or Diploma, of any University, College, or Hall in the United Kingdom; and those who were in practice in England or Wales before the passing of the Apothecaries’ Act of 1815.

“ XXVIII.—OBJECTS OF SCHOOL.

“ The School is intended for the Education of two hundred Boys, between the ages of eight and nineteen, none being above fifteen years old on Admission. One hundred boys shall reside in the College, twenty-five of whom may be Foundation Scholars, the remainder being Exhibitioners. The other hundred shall be Day Scholars.

“ XXIX.—FOUNDATION SCHOLARS.

“ The Foundation Scholars shall be entirely educated, clothed, and maintained by the College. They shall, with the exception of those nominated according to the provisions of Law XXXV. be elected by the Governors, after approval by the Council, in the same manner as the Pensioners, from among the necessitous orphans and sons of such Medical Men as would be professionally qualified for Pensionerships.

“ XXX.—EXHIBITIONERS.

“ The Exhibitioners shall pay a sum not exceeding £30 a year each, for education, board, lodging, and washing, without any extra charge for the use of books, instruments, &c.: the payments to be made in advance. The Exhibitioners shall, unless nominated according to the provisions of Law XXXV., be chosen by the Council, as vacancies occur, from among the sons of such Medical Men as would be professionally qualified for Pensionerships: they shall not be incapacitated for becoming candidates for Foundation Scholarships.

“ XXXI.—DAY SCHOLARS.

“ The one hundred Day Scholars, who shall not necessarily be the sons of Medical Men, shall be admitted by the Head Master. They shall pay a sum not exceeding £15 a-year each for education, exclusive of books, instruments, &c., and, unless recommended by a Life Governor, three guineas entrance fee. No Life Governor shall have more than one nomination in five years.

“ In addition to the above, the Sons of Pensioners may be admitted by the Council as Day Scholars, on such terms as the Council may from time to time determine.”

The Royal assent was given to the Act of Parliament incorporating the College, July 23rd, 1855, and on October the third of that year (*two months after*), the College was opened by the admission of 125 Exhibitioners, 20 Foundation Scholars, and 10 Pensioners.

In May, 1856, the Council issued their third Report, to which were annexed the Laws and By-Laws of the College, remodelled in accordance with the Act. The second By-Law is in the following words:—

“ II.—THE SCHOOL.

“ The School is intended for the Education of two hundred Boys between the ages of eight and nineteen, none being above fifteen years old on admission. One hundred and fifty Boys shall reside in the College, twenty-five of whom shall be Foundation Scholars, the remainder being Exhibitioners.

“The Foundation Scholars shall be entirely educated, boarded, clothed, and maintained by the College.

“The Exhibitioners shall pay a sum *not exceeding* £30 a-year each for education, board, lodging, and washing, without any extra charge for the use of Books, Instruments, &c., the payments to be made in advance.”

Up to this period all the proceedings of the College had been in harmony with the original Prospectus, and the Reports and Laws successively issued, and the Governors were warranted in believing that their money was subscribed, so far as the School was concerned, to insure the benefits of a cheap education, &c. at £30 a-year for the Exhibitioners, and a free Education, &c. for the Foundation Scholars, in strict accordance with the Laws.

But on the 11th of August, 1856, the Council proposed and carried, at an Extraordinary General Meeting of Governors, the following resolution, viz.—

“That the annual amount charged for each Exhibitioner, exclusive of any payment in respect of remaining at the College during the vacations, shall, for the future, be the sum of £40, payable in advance, by three equal payments of £13 6s. 8d., on or before the commencement of each term, viz.—Hilary, Easter, and Michaelmas.

This law was made retrospective; and the parents of Exhibitioners received polite notes from the Council, requesting to be informed, in *the course of nine days*, whether they intended their sons to return to the School. But when it was found that many of the Scholars were likely to be removed on account of the alteration, the following resolution was passed by the Council:—

“That, in future, the *parents of Exhibitioners* shall be required to give *three months’* notice of their intention to remove their sons from the College; or, in default of such notice, to pay for each boy, so removed, the sum of £10, being one-fourth of the annual payment for an Exhibitioner.”

Exhibitioner." It is boldly asserted that "the Council have with regret *been compelled by the Act* to alter the annual sum of £30 to that of £40." The Act positively received the Royal Assent *two months before the College* was opened! Parents were therefore induced to remove their children from other schools upon the expressed condition that they were to receive "an education* of a high character, *from the age of eight to that of nineteen, for £30 a-year.*" The charge was shortly raised to £40, upon grounds which existed *two months before* they entered the College, and the supporters of the late amendment have deliberately declared that a charge so made "*is just and reasonable!*"

This violation of a fundamental law of the Institution was earnestly protested against by the writer† and others; but the Council asserted that the 38th section of the Act of Incorporation made it imperative on their part to charge the prime cost of each Exhibitioner. The precise words, in their circular, dated 19th August, 1856, are "The Council *have with regret been compelled by the Act* to alter the annual sum of £30 to that of £40." If, therefore, the Council were wrong in this construction of the Act, or it can be shown that the charge can, by economy or other means, be reduced to £30, they ought *gladly* to revert to the *original charge*.—

The following is a copy of the 38th section of the Act of Incorporation, and that which affects the legal portion of the case; viz.

"It shall be lawful for the College to educate at their School, with the Foundation Scholars, to be elected by the Governors, other children, either as Boarders or as Day Scholars, and either as Exhibitioners or otherwise; and such children shall be received upon such terms of

* See Rule II. page 8.

† See "Lancet," August 23rd, Nov. 15th, 1856, &c.

“payment, and other terms and conditions, as shall be fixed by the Council; so, nevertheless, that the funds of the College applicable to the charitable objects of the Foundation shall not be diminished by the admission to the School of such other children.”

To those who, like the writer, deemed this step, on the part of the Council, a breach of faith to the public, and a hardship to the poorer members of the Profession, who had been led to expect an Education for their sons, from the age of Eight to Nineteen, at £30 a-year, two courses appeared to be open; first, to ascertain whether the construction put upon the Act was correct; and, secondly, if so, whether the advantages promised to the Exhibitioners could not, under proper management, still be afforded at £30 a-year, without recourse to any other source of income.

By the advice of Messrs. Frere & Co., of Lincoln's Inn, the comprehensive case, which is annexed, was drawn and submitted to Mr. Roundell Palmer. His opinion as to the true meaning of the 38th section of the Act of Incorporation is clear and decisive.

He states, “I am unable to concur in the opinion on which the Council have been advised to act, and have acted, with reference to the construction of the 38th clause of the Act of Parliament. My own opinion (and I am bound to say it is a decided one) is, that the clause referred to *does not, in any manner, prohibit the application of part of the funds of the College in aid of the expenses of the education, board, lodging, and washing of the Exhibitioners, and that the Act of Parliament did not render necessary any alteration in Rule XXX.* as to the*

* XXX—The Exhibitioners shall pay a sum not exceeding £30 a-year each, for education, board, lodging, and washing, without any extra charge for the use of books, instruments, &c.; the payments to be made in

“ *charge of not more than £30 a-year for Exhibitioners,*
 “ although it may be capable of proof that the cost of the
 “ education, board, lodging, and washing of such Exhibi-
 “ tioners may exceed £30 a-year. I conceive that the
 “ 38th* section of the Act *ought not*, without necessity, to be
 “ so construed as to involve a *compulsory alteration of the*
 “ *previously-existing plan and laws of the Charity*, upon the
 “ faith of which the Medical Profession and the public had
 “ been invited to subscribe, and had subscribed, their money
 “ to the Institution. An arbitrary intention of this kind is
 “ not to be ascribed to the Legislature, especially in the
 “ construction of a private Act, if any other construc-
 “ tion be possible; and if it had really been the intention
 “ of the Legislature to insist upon such a modification
 “ of the plan of the Charity, it might have been expected
 “ that it would be distinctly and unequivocally expressed.
 “ That the effect ascribed by the advisers of the Council
 “ to the 38th clause *does involve an important departure*
 “ *from the original plan of the College, and a breach of*
 “ *faith with the subscribers appears to me clear.* The
 “ original prospectus, the laws of the 18th of May 1854,
 “ and even the address of April, 1856, (ISSUED AFTER THE

advance. The Exhibitioners shall, unless nominated according to the
 provisions of Law XXXV., be chosen by the Council, as vacancies occur,
 from among the sons of such Medical men as would be professionally
 qualified for Pensionerships: they shall not be incapacitated for becoming
 candidates for Foundation Scholarships.

* XXXVIII.—It shall be lawful for the College to educate at their
 School with the Foundation Scholars, to be elected by the Governors,
 other children either as Boarders or Day Scholars, and either as Exhibi-
 tioners or otherwise, and such children shall be received on such terms
 of payment, and other terms and conditions, as shall be fixed by the Council,
 so nevertheless that the funds of the College, applicable to the charitable
 objects of the Foundation, shall not be diminished by the admission to the
 School of such other children.

“ PASSING OF THE ACT,) plainly show that *Exhibitioners*
 “ *to be partly maintained at the expense of the Charity,*
 “ and to pay not more than £30 towards their own
 “ expenses, constituted *one main portion of the original*
 “ *design ;* and, in fact, that the School department of the
 “ Charity was *principally designed for these Exhibitioners.*
 “ That the charge of £30 a-year was not fixed upon any
 “ estimate of the actual expense is expressly admitted
 “ in Mr. Propert’s letter of the 25th of August, 1856, to
 “ Mr. Cattlin. He says, ‘ I knew from the beginning that
 “ £30 would not meet the costs of Exhibitioners; but I
 “ had no doubt that a portion of the annual subscriptions
 “ might be devoted to meet the additional expense.* What
 “ words are there in the 38th clause of the Act which
 “ render necessary *this breach of faith with the sub-*
 “ *scribers ?* I can find none, *either to require or authorize*
 “ it, although there may be power under the 27th clause
 “ to alter the law in this as in other respects.”

So much for the legal aspect of the case, let us now turn to the pecuniary; and the observation may be pardoned, that the management in this respect does not inspire implicit confidence.

The estimate for the whole College, as set forth in the original Prospectus, amounted to the sum of £18,000. FORTY-FIVE THOUSAND POUNDS have been expended, and the buildings are still unfinished!!

Two thousand pounds have been subscribed to the Endowment Fund by the Surrey Medical Benevolent

* In another letter of Mr. Propert’s, quoted by Dr. Ballantine Ferguson, in the Lancet, October 11th, 1856, he states, “ Not that any of us could make up our minds that that sum would cover all expenses of the Exhibitioners, but we very naturally concluded that some portion of the annual subscriptions could legitimately be appropriated to meet *all above £30.*”

Society, in accordance with Clause VI. of the Act of Parliament, yet I am informed through the Secretary of the College that there *is no* Endowment Fund. Thus money intended for Exhibitioners has been devoted to Building and other purposes.*

At the Royal Naval School, children are educated at fifteen, twenty-five, and thirty pounds a-year, with a higher charge for those unconnected with the navy. Tables† have been drawn up by Dr. Ballard, a gentleman well known to the Profession, from actual investigation of the expenditure at the Naval School, showing where a large saving in that of the Royal Benevolent College is practicable, and he is prepared with plans by which the whole cost of each Exhibitioner may be reduced within £30 a-year, an annual saving of £1367 1s. 9d. being effected in one mode, and of £1917 1s. 9d. in another. In order to bring these facts under consideration, a requisition signed by upwards of one hundred and forty Governors was presented to the Council, and an extraordinary general meeting was convened and held on the 3rd of April last, at which it was intended to propose three resolutions.‡ The 1st, for a restoration of the law fixing the annual charge for Exhibitioners at £30. The 2nd, for a Committee to investigate the affairs of the College; and the 3rd, for an amendment of the Act, if it

* "Clause VI.—It shall be lawful for the Surrey Benevolent Medical Society to subscribe the sum of two thousand pounds to the Endowment Fund of the College, and five hundred pounds to the Building Fund thereof; and in consideration of such subscriptions the College shall place at the disposal of the said Society, for ever, four presentations for Exhibitioners, at an annual payment not exceeding fifteen pounds for each Exhibitioner."

† These tables would have been published, but for the fact that they require verbal explanation. As there is no other object in view than the welfare of the College, with the consent of Dr. Ballard, the writer will be happy to show them to any member of the Council, or their Secretary.

‡ See Resolutions set out, pages 26 and 27.

should be found necessary. Previously to the meeting, the case submitted to Mr. Roundell Palmer, and his opinion thereon, were communicated to the Council, and it was expected that a full and fair discussion of the several Resolutions would have taken place, that some deference would have been shown to the opinion of so eminent a Lawyer by those who professed to have been reluctantly compelled *by law* to make the change, and that Dr. Ballard's plans for a reduced expenditure would at least have received an impartial hearing.

The result, however, was otherwise. The first Resolution was met, not by argument, but by a vote of confidence in the Council, and an assertion "*that the charge of £40 was just and reasonable;*" an adjournment was then carried, and the meeting hastily separated, leaving the real questions yet to be disposed of. From the Council and their adherents we thus appeal to the great body of Governors and the public, and ask for a candid and attentive consideration of the annexed Documents.

The writer has taken an earnest interest in the Royal Medical Benevolent College from the time of its foundation, and heartily desires to honour both the Council and the Founder; but notwithstanding the deference due, and hereby accorded, to the Council of the College, if it can be shown upon such high legal authority as Mr. Roundell Palmer, and supported by facts irresistibly conclusive, that an important boon, "*one of the main objects of the Charity,*" has been unjustly and improperly withdrawn, any amount of odium which the writer may incur by submitting such facts to the impartial consideration of the public will be more than counterbalanced by the consciousness that he is performing a necessary and *disinterested* duty. A controversy, having for its aim such cardinal virtues as Justice and

Charity, should not be treated as a trial of strength, but of principle. A question involving the interests of hundreds is too great to be marred by the littleness of erimination. The difference between thirty and forty pounds a-year is, with many, "the difference between being able, and not being able to send their sons to the College." The efforts which have been and will continue to be made to restore the original plan of this Institution were not and will not be conducted with the intention of opposing legitimate authority, but solely to support and benefit the poor.

Can any one contend that it was right, after large sums of money had been subscribed (amounting to upwards of £44,000), to raise the annual charge for Exhibitioners from £30 to £40, before the School had been twelve months in operation? Both common sense and Mr. Roundell Palmer's opinion pronounce such a course to be *a breach of faith*.

But nevertheless it appears, that the Council had power, after inducing the public to subscribe their money for special purposes, forthwith to change the purposes for which it was subscribed. But could they *justly* exercise such power? Honour, strict justice, and right feeling demand that public promises thus made should be respected and faithfully performed. "It is excellent to have a giant's strength, but it is tyrannous to use it like a giant." The Council are armed with despotic power, but are not, therefore, justified in using such power despotically. The writer does not sympathize with any constituency which clothes its officers with absolute authority; all corporate bodies are too apt to use it rudely or tyrannically. The Governors of the Royal Medical Benevolent College number many thousands, yet they are mere ciphers; and, if it be necessary to amend or alter their own laws, they have not the

power, but must bend subserviently to the mandates of the few whose official dignity was created by themselves!!!

Reverting to the subject of Exhibitioners, it has been asserted "that many now in the College would scorn to be considered charitable objects." If their present connexion with the free scholars does not have that effect, the admission of Exhibitioners at £30 a-year will not produce it; and a boon, *always intended for the poorer members of the Profession*, would be properly conferred. The Council have full power to receive "other children," either upon self-supporting or remunerating charges, so that the wealthy may be gratified to any extent, and become the supporters instead of the recipients of charity.

Another objection urged against receiving Exhibitioners at £30 a-year is, that as they cost a higher sum, and that the College cannot afford to extend its aid to *one hundred and twenty-five scholars*. The number of Pensioners intended to be admitted is one hundred, but only twenty-five are now in the College. In like manner let as many Exhibitioners as the funds can afford be received upon the terms first proposed, and justice will be both honoured and satisfied. But if, as the Council allege, the Exhibitioners are only permissive occupants of the College, they *must* quit as soon as free scholars can be elected, so that the parents of Exhibitioners, by increasing the funds of the charity, would be, in fact, labouring to displace their own sons!

Thus, the original plan having been *changed*, one part of the scheme is antagonistic to another, and discord prevails to the scandal and injury of the College. The resolution, passed at the last General Meeting, cannot be expected to settle the question, since it implies that it is *just* to break public promises and commendable to appropriate funds to

different purposes than those for which they were subscribed. It is much to be hoped that the very decided opinion of Mr. Roundell Palmer, may yet be taken as the basis of action, and a controversy terminated which cannot fail to distract and disconnect the friends of our noble Institution. Or, would it not be wise, (by consent of the Solicitors on both sides,) to refer the opinions of Mr. Wilcock* and Mr. Palmer, to some eminent Counsel for decision, upon such terms as would be just and satisfactory? The Council have always expressed their regret that the change was imperative; now that it has been pronounced to be unjust and unnecessary by one of the highest legal opinions in the country, they will have a fitting opportunity of proving the kindness and sincerity of their feeling.

The question will probably be again canvassed at the General and other Meetings, when it is hoped that all interested in the welfare of the School will not fail to attend. The matter is of vital importance; the increased charge is but the *beginning of changes*. If the principle asserted by the Council be correct, the very existence of the School as connected with the College is at stake. If the Council be right, the Exhibitioners have no title to the College at all. These stately buildings, this spacious School, these dormitories, masters' houses, and chapel, are *not for the Exhibitioners*, but for the Foundation Scholars, and for *them alone*. As a matter of grace and sufferance, the Exhibitioners may be permitted there until Foundationers can be elected; but as the one class increases, the other must decrease, until soon or late the School for the sons of "Lesser Lights," ushered into the world with such fair prospects—the School for which so many have laboured, to which so many have liberally subscribed, the anticipated

* Mr. Wilcock is the Legal Adviser of the Council.

benefits of which have cheered the hearts of so many of our struggling brethren—the School which was to take rank among the great educational institutions of the land, must dwindle into insignificance, or seek a home elsewhere than in the halls of the Royal Medical Benevolent College.

The writer was aware, when first this onerous task was undertaken, that he who humbly endeavours to support *any cause* against the power and influence of corporate authority will be called upon to make many great and painful sacrifices. No mercenary motives prompt his mind, no lack of charity directs his pen; and should this veritable statement produce conviction, and excite sympathy, he claims for “honest poverty” the help it needs, the aid and influence of the wise and good.*

9, SEBBON'S BUILDINGS, ISLINGTON.

April 10th, 1857.

* The documents referred to in this statement will be open to inspection at the above address; and any gentleman willing to assist the cause of the Exhibitioners is requested to transmit either his name or subscription to Dr. Ballard, Myddleton Square; Dr. Brown, Quadrant Villa, Islington; or Dr. Cholmeley, 40, Russell Square.

ROYAL MEDICAL BENEVOLENT COLLEGE.

CASE SUBMITTED TO ROUNDELL PALMER, Esq., Q. C.

SOLICITORS—FRERE AND CO., LINCOLN'S INN.

THE accompanying paper, No. 1, is the original Prospectus for this Institution, issued in 1851. It will be seen that it embraced two principal objects, viz., a College or Asylum, for the reception of one hundred distressed members of the Medical profession, having incomes of not less than £15 per annum, as permanent residents; and a School for the education and maintenance of one hundred boys, sons of Medical men, at an annual expense, to cover everything but books, of £25.

As subsidiary but minor branches of each of these leading objects, it was hoped that the funds would enable the entire support of some deserving cases among the Pensioners; and it was proposed to admit a certain number of Orphans to the School, to be entirely educated and supported there.

The following are the paragraphs of the prospectus relating to the School, which is the subject to which attention is particularly directed:—

The School Department shall afford accommodation for one hundred boys, with commodious dormitories, and other arrangements for masters, tutors, matron, and domestics. It is proposed that this department of the Institution shall be increased from time to time,

as the funds placed at the disposal of the Council may permit.

No boy to be eligible for admission unless he be the son of a duly-qualified practitioner. The education to be of a high character, and conducted by clergymen of the Church of England. The whole annual expense for education, board, lodging, washing, &c., to be £25. Books, the only extra, to be furnished at the cost price.

It is also proposed to admit a certain number of Orphans to be entirely educated and supported at the expense of the establishment.

The plan was received with great favour by the public, as well as the Medical profession, and by 1855, upwards of £27,000 had been raised. The foundation stone of the College was laid in July, 1853, by Earl Manvers, as representing Prince Albert. The School and a portion of the Asylum were finished in 1855, and the School has been for some time in full operation.

During the progress of the Institution, laws and by-laws were framed for its governance, which will be found embodied in the accompanying report, issued in April 1856; and in the session of 1855, an Act of Parliament was obtained for the incorporation of the College, and enabling it to absorb the funds of some minor Medical Societies. The laws, as set out in the accompanying report, were in force at the time the Act was obtained.

It will be seen that the report of 1856 is preceded by an address, recapitulating the objects of the Institution, and appealing to the public for increased assistance, the objects being there stated to be—1st. The Asylum, for the reception of one hundred Pensioners, possessing not less than £15 per annum, with the hope of extending entire support

to a few. 2nd. The School, in which a liberal education is to be given to one hundred and fifty boys, the sons of Medical men ; one hundred and twenty-five of whom are to pay £30 a year, for education, board, lodging, and washing, while the rest are to be orphans, educated and maintained entirely at the expense of the society. 3rd. To grant annuities and occasional pecuniary assistance to distressed members of the profession as the funds might permit.

The laws of the College, as set out in this report, distinguish the Scholars into Foundation Scholars, Exhibitioners, and Day Scholars. The 28th law states the School to be intended for the education of two hundred boys, one hundred of whom shall be resident, twenty-five of whom MAY be Foundation Scholars, the remainder being Exhibitioners, the other hundred shall be Day Scholars. Law 29 describes the Foundation Scholars as those to be entirely educated and maintained by the College, and prescribes the mode of electing them. Law 30 relates to the Exhibitioners, provides that they shall pay a sum not exceeding £30 a-year each, for education, board, lodging, and washing, without any extra charge for the use of books, instruments, &c., and prescribes how they shall be elected. Law 31 relates to the Day Scholars, who shall not be necessarily the sons of Medical men. It is to be observed that the *Governors* have the power of *electing Pensioners and Foundation Scholars*, the *Council* that of choosing the *Exhibitioners*.

As before stated, in 1855, an Act was obtained, incorporating the College. It is alleged that this Act was obtained without proper notice to the Governors ; but, passing by that point for the present, attention is requested to the provisions of the Act.

The preamble states the objects of the College to be—

1st. The Asylum. 2nd. "To provide a School for the sons of duly-qualified Medical men." 3rd. Annuities and pecuniary assistance when they could be granted without detriment to the Asylum and *School, which are to be ever regarded as the principal objects of the Association.*

The 2nd section of the enacting part of the Act recapitulates the purposes of the College in the same words.

The 26th section defines the duties and powers of the Council, stating that they shall direct the application of the funds of the College, and conduct the general business of the College. The 27th section says, that the Council "may also draw up by-laws for the regulation of the College, and such by-laws may be in addition to, or may repeal or alter, existing by-laws;" and provides how such by-laws shall be confirmed.

The 28th empowers the Council to appoint Committees. The 36th section declares that "It shall be lawful for the College, from time to time, on any land which may be vested in or acquired by them under the powers of this Act, to erect such buildings for Asylums or Schools, or for Chapels and Offices, in connexion therewith, as they may think proper, for the benefit of Medical men, duly qualified according to the provisions of this Act, and of widows and children of such Medical men, and to prescribe such rules and regulations for the good government and general regulation of such Asylums and Schools, and the inmates thereof; and with respect to the benefits to be conferred therein or otherwise, by means of the funds of the College; and with respect to the qualifications and conduct of the persons entitled to receive or actually receiving such benefits, as they may think proper; and all such rules and regulations shall be considered as by-laws for the regulation of the College, within the meaning of

this Act, and may from time to time be repealed, altered, or varied by the Council as other by-laws may be repealed, altered, or varied by them.

The 38th section declares that it shall be lawful for the College to edueate at their Schools, *with the Foundation Scholars to be elected by the Governors*, other children, either as boarders or day-seholars, and either as exhibitioners or otherwise; and such ehildren shall be received on such terms of payment, and other terms and eonditions as shall be fixed by the Council, *so, nevertheless, that the funds of the College, applicable to the charitable objects of the foundation, shall not be diminished by the admission to the Schools of such other children.*

The 39th section declares that all existing by-laws should remain in force until altered; and the 40th, that no by-laws of the College for the time being should be repugnant to the Act or to the Laws of England.

After considering the provisions of the Act, the Council of the College came to the conclusion that the 38th elause prohibited them applying any portion of the funds of the College towards defraying the expenses of the Seholars who were termed Exhibitioners, that in faet the education of these seholars must be made self-supporting; and having, as they alleged, aseertained upon investigation, that this could not be done for less than £40 per annum for each seholar, they proposed and carried, at an extraordinary general meeting, held in August 1856, an alteration of law 30 to the effect that the Exhibitioners should pay a sum not exceeeding £40 a-year each. Assuming that the Council had power to make such an alteration at all, it is not disputed that it was formally made and eonfirmed. The Bishop of Winehester was appealed to as Visitor, by one of the Governors, not to confirm the resolution, on the

ground that it was contrary to the original design of the Institution, but without effect.

The alteration created great dissatisfaction amongst a large body of the subscribers. It is alleged by such subscribers that such alteration is an alteration of the fundamental constitution of the College, and tantamount to an abolition of one of the objects for which, and upon the faith of the promulgation of which, these large funds were collected; that to many of the class of Medical men, for whose especial benefit the College was projected, the difference between £30 and £40 a-year is the difference between being able and not being able to send their sons to the school; that if the Council are right in their construction of the thirty-eighth clause of the Act, the Act has subverted one of the principal objects, for the promotion of which it was passed, substituting the gift of gratuitous education and maintenance of a few, in lieu of the boon of education and maintenance, at something less than cost price for the many. It is also urged, that such a construction of the Act is inconsistent with its own statement of the objects of the College, "to provide a school for the sons of duly qualified Medical men;" and that reading such statement by the light of the then existing laws, and the professions held out to the public, the alteration which has been made is "repugnant to the Act" itself, and such a departure from the original and fundamental design of the institution as cannot be legally carried into effect without the assent of every individual who has contributed to it, or of every Governor entitled to a vote.

The Council have subsequently issued the accompanying Report (dated December 22nd, 1856) showing the data upon which the increased charge was founded.

It is also questioned whether the Act itself was legally

obtained. It seems that the Council reported to a General Meeting, in 1855, that they had applied for an Act, and to one in 1856 that they had obtained it; but it is asserted that no reference to the Act was made in any advertisement calling such meetings as prescribed by Law 6, neither was any draft of the intended Act read at any meeting, or in any way communicated to the general body of Governors.

An Extraordinary General Meeting has been summoned FOR THE 3RD OF APRIL, on the requisition of twenty Governors, pursuant to Law 7, for the purposes of proposing the restoration of Law 30 to its original state, and the appointment of a Committee to investigate the affairs of the College.

The Council, in responding to the requisition, asserted the proposed objects to be illegal; they did not state on what ground, but are understood to contend that all such proceedings can emanate from the Council alone.

A Copy of the Advertisement calling the Meeting is appended below.

ROYAL MEDICAL BENEVOLENT COLLEGE (Incorporated by Act of Parliament).

Notice is hereby given, that, in obedience to a Requisition properly signed, which has been received by the Council, an Extraordinary General Meeting of the Governors of the College will take place at the Freemasons' Tavern, on Friday, the 3rd of April, 1857, at Three o'clock precisely, for the purpose of considering the three following Resolutions which have been communicated to the Council:—

1. "That the Council be and are hereby requested forthwith to draw up such by-laws as shall enact that from and after Christmas, 1857, the annual amount charged for each Exhibitioner (exclusive of any payments in respect of remaining at the College during the vacations), shall be the sum of £30, payable in advance by three equal payments of £10, on or before the commencement of each Term, viz., Hilary, Easter, and Michaelmas.

2. "That this Meeting is of opinion, that a Committee should be

appointed to investigate, and at the next Annual Meeting to report upon, the affairs of the College generally, more especially with reference to its working expenses, and the further development of the educational department.

3. "That the Royal Medical Benevolent College Act of the 18th and 19th Victoria, having annihilated the rights of Exhibitioners, be so amended as to enable the Council to board and educate Exhibitioners for an annual charge not exceeding £30, inclusive of all extras whatsoever."

As the Act of Parliament incorporating the Royal Medical Benevolent College enacts, that an Extraordinary General Meeting of the Governors shall be called, upon the requisition of twenty Governors, the Councillors have called such a Meeting; but the Council feel it to be their duty to inform the Governors, that they have been advised by eminent legal authority, that the first and second of the above resolutions could not be carried into effect, even should the Extraordinary General Meeting think it to pass them, inasmuch as such resolutions are in express contravention of the Act of Parliament, by which the College is incorporated, which opinion has already been communicated to the Requisitionists.

By order of the Council,

ROBERT FREEMAN, Secretary.

HERBERT WILLIAMS, Assist. Sec.

13, Soho-square, London, March 18th, 1857.

The principal points for consideration appear to be—

1. The construction of the 38th clause.*
2. If the construction put on it by the Council be correct, whether nevertheless it compels or justifies the course pursued by the Council.
3. Whether the Act itself be binding, and to what extent.

The construction of the 38th clause seems to turn mainly upon the meaning of the words "so, nevertheless, that the funds of the College applicable to the charitable objects of the Foundation shall not be diminished." It is contended on the part of the dissentients that the clause should be read thus:—

* It is stated that the latter part of the 38th clause was inserted by Lord Redesdale, in opposition to the wishes of the promoters of the Act.

Whereas the charitable objects of the Foundation are, (at the time of passing the Act,) 1. An asylum for the reception of one hundred Pensioners possessing yearly incomes of £15 each. 2. The education of one hundred resident Scholars, the sons of Medical men; twenty-five of whom shall be termed Foundation Scholars, and shall be entirely educated, clothed, and maintained by the College; and the remaining seventy-five of whom shall be termed Exhibitioners, and shall pay a sum not exceeding £30 a-year for education, board, lodging, and washing, without any extra charges. It shall be lawful for the College to educate at their Schools [*with the foundation scholars to be elected by the Governors*] other children, either as boarders or day-scholars, and either as Exhibitioners or otherwise, and such children shall be received on such terms of payment, and other terms and conditions as shall be fixed by the Council, so, nevertheless, that the funds of the College applicable to the "above-mentioned" charitable objects of the Foundation shall not be diminished by the admission to the school of such other children.

The charitable objects of the Foundation being in fact the one hundred Pensioners, the twenty-five gratuitous Scholars, and the seventy-five Exhibitioners at £30 a-year each, and the funds of the College being applicable to all or any of those objects, but not to any other, or to any increase of any one of those objects, until all are accomplished.

It must be admitted that the words in brackets oppose a difficulty to this reading, but they are a less difficulty than a construction which excludes Exhibitioners, and confines the application of the Charitable funds, subscribed for a much more extensive purpose, to the Foundation Scholars strictly

called. The very limit of the word "Foundation" to gratuitous scholars is, in itself, unauthorized and arbitrary. What is the meaning of Exhibitioners? Are not Exhibitioners, who are to be partially educated and maintained by the College also entitled, according both to usage and principle, to be considered on the Foundation. The benefits conferred by and derived from founders differ largely in different foundations; but, are not all who participate in such benefits, "Foundationers?" If it be now competent to the Council to raise the sum to be charged to the Exhibitioners from £30 to £40, may they not equally well raise the income which a Pensioner must possess, from £15 to £30? May they not abrogate gratuitous education and maintenance altogether, and create a new foundation?

A question may also be raised as to what is meant by the Funds of the College applicable to the charitable objects of the Foundation." Do these words include future voluntary gifts and subscriptions, or are they confined to the amount which had been then collected?

It may be observed that the phrase "from time to time" occurs continually in the Act with reference to acts to be done by the College or Council, but does not occur in the 8th clause, and it has therefore been suggested that that clause does not confer the power on the Council of fixing "from time to time," but for once only, the terms and conditions, &c., on which children are to be received.

The College commenced with the reception of twenty Pensioners, seventy-five Exhibitioners at £30 a-year, and twenty or twenty-five Foundation Scholars. There are now twenty-five Pensioners, 125 Exhibitioners, all paying £40 a-year, and twenty-five Foundation Scholars. The whole 25 Exhibitioners have paid the charges for one term at the rate of £40 per annum, without any formal protest

having been made to the Council upon the part of any of them against the increase.

You are requested to advise

1. Upon the meaning and effect of the 38th clause with reference to the points raised in the case.

2. Assuming that clause 38 does *per se* prohibit the application of any portion of the funds of the College in aid of the education and maintenance of the Exhibitioners, are the Council thereby compelled to make, or justified in making the alterations they have done, or is not the effect of that clause so controlled and explained by the general scope and intention of the Act, and the then existing laws and objects of the College, as to justify the Council in continuing to act upon the laws as they were in force at the time of the Act being passed, and reverting to such laws accordingly.

3. Assuming, as in the preceding question—Do the funds of the College referred to in the 38th clause, include voluntary subscriptions and gifts received since the Act, or are they confined to funds realized at that time; and if they are so confined, does the Act impose any restriction whatever upon the application of the income of the College, extra such realized fund?

4. Assuming the whole income of the College to fall within the restriction of the Act as construed by the Council, does that make it incumbent to charge the Exhibitioners such a sum as will cover interest upon the outlay made upon buildings and fittings for the school buildings, past and future, or either? (See clause 36.)

5. Does anything turn upon the omission or use of the words “from time to time” in the Act?

6. Is it competent to individual members at a general

meeting, ordinary or extraordinary, to initiate alterations of the laws and the appointment of Committees, and for the majority of Governors at such meetings to pass resolutions carrying such matters into effect, binding upon the Council and the College, notwithstanding the dissent of the Council? (Vide law IV. and the general provisions of the Act.)

7. Was the Act properly obtained, and if not, is it binding, and can any of its provisions be safely and properly disregarded?

8. Is it advisable that any formal refusal of payment of the increased charge should be made by or on behalf of the original seventy-five Exhibitioners, or any of them, when the charges for next time become due?

And generally, what course the dissentient members should adopt to carry out their views?

Papers accompanying:—

1. Prospectus.
2. Act of Incorporation.
3. Report, 1856.
4. Report of Committee on Expenses.

ROYAL MEDICAL BENEVOLENT COLLEGE.

FURTHER STATEMENT.

Sinec this Case was sent to Mr. Palmer, the accompanying papers have been sent to Messrs. Frere, and Co., viz.—

1st. The First Report of the Council, May, 1854, showing the progress of the Institution, recapitulating its objects, and containing the laws, as adopted at the first General Meeting, and which are those contained in the Report sent with the case.

2nd. The Third Report, May, 1856, containing the Treasurer's Reports of 1854, and 1855, and the laws and by-laws re-arranged.

It appears that the Council had then thought it advisable to divide the laws into two classes, *i. e.*—First, such laws as they considered incorporated in, and created by, the Act, and unalterable, and which they called “Laws,” and, secondly, such laws, as though in force at the time of the passing the Act, and still then continuing in force, they considered subject to alteration, and called “By-Laws.” The second of these by-laws relates to the School, and it will be seen does not differ from the laws as previously existing—but see *Law 3*.

3rd. Circular issued after the alteration of the payment by Exhibitioners, from £30 to £40, containing the new resolution.

4th. The account of the College issued at the beginning of the present year, in which it will be seen the address to the public, and By-Law, No. 2, are altered to meet the change.

Messrs Frere, and Co. have also seen a statement on behalf of the Council, that at that time (1856), there had been received by donations from the public, £44,000, of which £40,000, together with about £5,000 borrowed by the Council, had been expended in the purchase of land and erection of buildings, and in furniture, and legal, and other expenses. Thus it appears, that the revenue of the College entirely depends upon voluntary subscriptions.

The calculation of the committee appointed by the Council to investigate the subject of the Exhibitioners, was, that of the above outlay, about £11,000, had been spent on what they termed the compulsory objects of the Act, *i. e.*, the Pensioners and Foundation Scholars, and the remainder on what they termed the permissive, *i. e.*, the Exhibitioners.

It is the feeling of many of the dissentients, that even if the Council's construction of the Act be right, £30 per annum would, under proper management, be a self-supporting payment by the Exhibitioners; this, however, is only relevant to the questions submitted to Mr. Palmer so far as they refer to the means by which the dissentients may seek and obtain an investigation of the accounts and affairs by their party.

The College was opened in October, 1855, with twenty Pensioners, twenty-five Foundation Scholars, and one hundred and twenty-five Exhibitioners, at £30 a-year each.

ROYAL MEDICAL BENEVOLENT COLLEGE.

OPINION OF ROUNDELL PALMER, Esq., Q. C., ON THE CASE
SUBMITTED BY MESSRS. FRERE AND CO.

1. I am not able to concur in the opinion, on which the Council have been advised to act, and have acted, with reference to the construction of the 38th clause of the Act of Parliament. My own opinion (and I am bound to say that it is a decided one) is, that the clause referred to does not in any manner prohibit the application of part of the funds of the College in aid of the expenses of the education, board, lodging, and washing of the Exhibitioners; and that the Act of Parliament did not render necessary any alteration whatever of Rule 30, as to the charge of not more than £30 a-year for Exhibitioners; although it may be capable of proof, that the cost of the education, board, lodging, and washing of such Exhibitioners may exceed £30 a-year.

I conceive that the 38th clause* of the Act ought not,

* XXXVIII.—It shall be lawful for the College to educate at their schools with the Foundation scholars, to be elected by the Governors, other children either as boarders or day-scholars, and either as Exhibitioners or otherwise, and such children shall be received on such terms of payment, and other terms and conditions, as shall be fixed by the Council, so nevertheless that the funds of the College, applicable to the charitable objects of the Foundation, shall not be diminished by the admission to the schools of such other children.

without necessity to be so construed, as to involve a compulsory alteration of the previously-existing plan and laws of the Charity, upon the faith of which, the Medical profession and the public had been invited to subscribe, and had subscribed, their money to the Institution. An arbitrary intention of this kind is not to be ascribed to the Legislature, especially in the construction of a Private Act, if any other construction be possible; and if it had really been the intention of the Legislature to insist upon such a modification of the plan of the Charity, it might have been expected that it would be distinctly and unequivocally expressed.

That the effect ascribed by the Advisers of the Council to the 38th clause, does involve an important departure from the principle of the original plan of the College, and a breach of faith with the Subscribers, appears to me clear. The original prospectus, the Laws of the 18th May, 1854, and even the address of April, 1856 (issued after the passing of the Act), plainly show, that Exhibitioners to be partly maintained at the expense of the Charity, and to pay not more than £30 a-year towards their own expenses constituted one main portion of the original design; and, in fact, that the School Department of the Charity was principally designed for these Exhibitioners. That the charge of £30 a-year was not fixed upon any estimate of the actual expense, is expressly admitted in Mr. Probert's letter of the 25th August, 1856, to Mr. Cattlin, he says: "I knew from the beginning, that £30 would not meet the cost of Exhibitioners; but I had no doubt that a portion of the annual subscriptions might be devoted to meet the additional expense."

What words are there in the 38th clause of the Act which render necessary this breach of faith with the subscribers?

I can find none, either to require or to authorize it, although there may be *power* under the 27th clause to alter the laws in this as in other respects.

It is apparent on the face of the 38th clause, that the word "exhibitioners" as there used, does not mean "*boarders*," for it "contemplates and allows boarders, who may or may not be exhibitioners." What, then, does "exhibitioners" mean? The proper meaning of the word, apart from any context, necessarily implies some benefit received at the cost of this or of some other charity. It is so used in clause 6* of this very Act. But I hold it to be clear, from the whole context, that it is used here with a direct reference to the previously-existing laws of the College; and therefore that Law 30 (as it then stood) so far from being abrogated or interfered with by this clause, ought to be referred to, for the purpose of aiding in its interpretation. If, according to the true construction of Law 30† (as it stood before), the maintenance of certain Exhibitioners was part of "the charitable objects of the Foundation," I am wholly unable to discover anything in this clause which should afterwards make it otherwise. The

* VI.—It shall be lawful for the Surrey Benevolent Medical Society to subscribe £2,000 to the Endowment Fund of the College, and £500 to the Building Fund thereof, and in consideration of such subscriptions the College shall place at the disposal of the said society for ever four presentations for Exhibitioners at an annual payment not exceeding £15 for each Exhibitioner.

† XXX.—The Exhibitioners shall pay a sum not exceeding £30 a-year each, for education, board, lodging, and washing, without any extra charge for the use of books, instruments, &c.; the payments to be made in advance. The Exhibitioners shall, unless nominated according to the provisions of Law XXXV., be chosen by the Council, as vacancies occur, from among the sons of such Medical men as would be professionally qualified for Pensionership: they shall not be incapacitated for becoming candidates for Foundation Scholarships.

proviso, "*so nevertheless, &c.*" is perfectly sensible and officious, and is susceptible of a consistent and satisfactory construction, without any such infringement of the original design. The liberty given by the 38th clause to educate with the Foundation Scholars, "*other children*, either as boarders or day-scholars, and either as Exhibitioners or otherwise," having been expressed in general terms without any restraint to the children of duly-qualified Medical practitioners, and the only "charitable objects of the Foundation"* (as to the school), having been (in the words of clause 2) "to provide a school *for the sons of duly-qualified Medical men*," it was necessary to guard against any abuse of this liberty, so generally given as to "other children," which might encroach upon the funds dedicated to the "*purposes of the College*," as defined in clause 2; and I am of opinion that this, and this only, is the effect of the proviso which (if my view is correct) has been so much and so unfortunately misunderstood.

2. If the construction of the 38th clause were that which the Council have assumed it to be, they would have been bound to obey it, and would not have been justified (in that case) in acting upon the previous laws of the College in opposition to the Act of Parliament.

3. I think the funds of the College, mentioned in the 38th clause are not confined to funds realized at the time

* Clause II. The purposes of the College are as follows:—

First, To provide an asylum for duly-qualified Medical men and their widows in reduced circumstances :

Secondly, To provide a *school* for the sons of duly-qualified Medical men : and,

Thirdly, To provide annuities, or occasional pecuniary assistance, to duly-qualified Medical men in distressed circumstances, or to their families, when they can be granted without detriment to the asylum or *school*, which are to be ever regarded as the principal objects of the College.

when the Act became law; but that they extend to all voluntary subscriptions and donations whatsoever, at whatever time given, for the *general purposes* of the College. If, however, any funds were given to the College, not for its general purposes, but with a special appropriation by the subscribers or donors, to any particular trust, whether for the benefit of any given class of Exhibitioners or otherwise, I think that such funds must be applied in accordance with such particular trust; and that there would be nothing in the 38th clause to prevent the College from accepting donations on such special trusts, and applying them accordingly, even if the construction, which the Council have been advised to place upon that clause were (in other respects) correct.

4. I think it would not be necessary, nor indeed proper, to answer this question in the affirmative (having regard to the 36th* clause) even if the construction placed by the Council on the 38th clause were correct. At the same time, I consider the fact, that buildings sufficient to provide gratuitous lodging for the Exhibitioners were to be

* XXXVI.—It shall be lawful for the College from time to time, on any land which may be vested in or acquired by them under the powers of this Act, to erect such buildings for asylums or schools, or for chapels and offices in connection therewith, as they may think proper, for the benefit of Medical men, duly qualified according to the provisions of this Act, and of widows and children of such Medical men, and to prescribe such rules and regulations for the good government and general regulation of such asylums and schools and the inmates thereof, and with respect to the benefits to be conferred therein or otherwise by means of the funds of the College, and with respect to the qualifications and conduct of the persons entitled to receive or actually receiving such benefits, as they may think proper; and all such rules and regulations shall be considered as by-laws for the regulation of the College within the meaning of this Act, and may from time to time be repealed, altered, or varied by the Council as other by-laws may be repealed, altered, or varied by them.

erected at the expense of the Charity, to be a strong indication that the Exhibitioners, for whom that accommodation was to be provided by the Charity, are charitable objects of the Foundation within the meaning of the whole Act, and of the 38th clause in particular.

5. Nothing whatever turns upon the omission of the words "from time to time."

6. This question must, I think, be answered in the negative. The sole initiative power appears to me to be with the Council.

7. I do not exactly understand what is meant by "properly obtained." Whether it was obtained in good faith or otherwise, with or without notice to the subscribers, or with or without compliance (even) with the Standing Orders of the Houses of Parliament, the Act is binding; and none of its provisions can be lawfully disregarded until repealed or altered by some other Act of the Legislature.

8. I consider that Law 30, as it stood before the passing of the Act is one of the "by-laws" confirmed by clause 39 of the Act, and which, by clause 27, the Council, with the assent of a General Meeting of the Governors, and of the Visitor, have power to repeal or alter. Therefore, although it seems to be that the Council have taken an entirely erroneous view of the effect of the Act, I cannot say that the alteration of Law 30, confirmed as it has been by an Extraordinary General Meeting, and by the Visitor, is illegal; nor can I advise payment of the increased charge of £40 per annum to be refused by the parents or friends of any Exhibitioner, who has been admitted under the altered rule. The only remedy open to the dissentient subscribers appears to me to be, to move the Council to take the necessary steps for restoring the original law on this subject, with the concurrence

rence of a General Meeting, and the sanction of the Visitor; and if they fail to do so, to endeavour to elect for the future Members of Council who concur in their view, or, if they prefer that alternative, to withdraw their support from the College.

ROUNDELL PALMER.

March 31, 1857.